

BOARD OF SUPERVISORS
COUNTY OF YORK
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in the Board Room, York Hall, Yorktown, Virginia, on the ____ day of ____, 2002:

Present

Vote

Donald E. Wiggins, Chairman
Walter C. Zaremba, Vice Chairman
Sheila S. Noll
James S. Burgett
Thomas G. Shepperd, Jr.

On motion of _____, which carried ____, the following ordinance was adopted:

AN ORDINANCE TO AMEND YORK COUNTY CODE SECTION 14-14.1
RELATIVE TO APPEALS OF LOCAL LICENSE TAX ASSESSMENTS AND
EXTENDING THE TIME DURING WHICH AN APPEAL MAY BE MADE
TO THE COMMISSIONER OF REVENUE

WHEREAS, the 2002 General Assembly adopted House Bill 317 which, among other things made certain amendments relative to appeal periods of local license tax assessments; and

WHEREAS, House Bill 317 requires suitable amendments to York County Code § 14-14.1.

NOW, THEREFORE, BE IT ORDAINED by the York County Board of Supervisors this ____ day of ____, 2002, that § 14-14.1 of the York County Code be and it is hereby amended as follows, such amendments to take effect upon adoption:

Sec. 14-14.1. Appeals and rulings.

- (a) Any person assessed with a local license tax as a result of an ~~audit or statutory assessment~~ appealable event as defined in this section may apply within ~~ninety (90) days~~ one (1) year from the date of ~~such assessment~~ the appealable event, whichever is later, to the commissioner of revenue for a correction of the assessment. The application must be filed in good faith and sufficiently identify the taxpayer, ~~audit period~~ the tax periods covered by the challenged assessments, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The commissioner of revenue may hold a conference with the taxpayer if requested by the taxpayer, or re-

quire submission of additional information and documents, an audit or a further audit, or other evidence deemed necessary for a proper and equitable determination of the application. The assessment shall be deemed prima facie correct. The commissioner of revenue shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth its position. Every assessment pursuant to an audit/appealable event shall be accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed (e.g., the name and address to which an application should be directed).

- (b) Provided a timely and complete application is made, collection activity shall be suspended until a final determination is issued by the commissioner of revenue, unless the commissioner of revenue determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of section 14-11, but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires to (i) depart quickly from the County; (ii) remove his property therefrom, (iii) conceal himself or his property therein, or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.
- (c) Any person assessed with a local license tax as a result of an audit determination, upon an application for correction pursuant to subdivision (a) of this section, that is adverse to the position asserted by the taxpayer in such application may apply within ninety (90) days of the determination by the commissioner of revenue on an application pursuant to subsection (a) above to the Tax Commissioner for a correction of such assessment. The Tax Commissioner shall issue a determination to the taxpayer within ninety (90) days of receipt of the taxpayer's application, unless the taxpayer and the commissioner of revenue are notified that a longer period will be required. The application shall be treated as an application pursuant to § 58.1-1821, Code of Virginia, and the Tax Commissioner may issue an order correcting such assessment pursuant to § 58.1-1822, Code of Virginia. Following such an order, either the taxpayer or the commissioner of revenue may apply to the appropriate circuit court pursuant to § 58.1-3984, Code of Virginia. However, the burden shall be on the party making the application to show that the ruling of the Tax Commissioner is erroneous. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.
- (d) On receipt of a notice of intent to file an appeal to the Tax Commissioner, the commissioner of revenue shall further suspend collection activity until a final determination is issued by the Tax Commissioner, unless the commissioner of revenue determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of section 14-11, but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" shall have the same meaning as set forth above.

- (e) Any taxpayer may request a written ruling regarding the application of a local license tax to a specific situation from the commissioner of revenue. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court decision, or the guidelines issued by the Department of Taxation upon which the ruling was based or (ii) the commissioner of revenue notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.
- (f) For purposes of this section, "appealable event" means an increase in the assessment of a local license tax payable by a taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was assessed, arising out of the commissioner of revenue's (i) examination of records, financial statements, books of account or other information for the purpose of determining the correctness of an assessment, (ii) determination regarding the rate or classification applicable to the licensable business, (iii) assessment of a local license tax when no return has been filed by the taxpayer, or (iv) denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license.
- (g) Any taxpayer whose application for correction pursuant to the provisions of subdivision (a) above has been pending for more than two years without the issuance of a final determination may, upon not less than thirty days' written notice to the commissioner of revenue, elect to treat the application as denied and appeal the assessment to the Tax Commissioner in accordance with the provisions of subsection (c). In accordance with § 58.1-3703.1 (A)(5)(g), Code of Virginia, the Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this subsection if he finds that the absence of final determination on the part of the assessor was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the assessor to make his determination.